Calendar No. 488

106TH CONGRESS, *2d Session* | SENATE | REPORT 106–258

ELIM NATIVE CORPORATION LAND RESTORATION

APRIL 10, 2000.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 3090]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 3090) to amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes, having considered the same, reports favorable thereon without amendment and recommends that the Act do pass.

PURPOSE OF THE MEASURE

The purpose of H.R. 3090 is to amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, to allow an Alaskan Native to give settlement common stock to a native child even if parental rights have terminated and to provide a definition of settlement trust.

BACKGROUND AND NEED

Section 1 of H.R. 3090 directs the Secretary of the Interior to convey 50,000 acres of land to the Elim Native Corporation, a village corporation established under section 19(b) of the Alaska Native Claims Settlement Act. The land, currently managed by the Bureau of Land Management ("BLM") is in an area north of the former Norton Bay Reservation. This acreage would replace 50,000 acres removed from the Reservation in 1929 by Executive Order from the Reservation established for the benefit and use of people whose descendants are today the shareholders of this Native village corporation.

In 1916, a group of Inupiat Eskimos, whose ancestors had lived in the Norton Bay region for centuries, were relocated from Golovin

Mission to a camp known today as Elim, Alaska. The people reportedly were suffering from measles, diphtheria, and tuberculosis and other diseases they were exposed to by the influx of non-Native settlers working in the gold mining and other industries in the vicinity of Nome and Golovin.

Golovin Mission was located in a barren area and the Eskimos could not support themselves there. The location the people were moved to had an abundant supply of fish, game, timber and reindeer moss. Apparently, the site also was chosen because of the presence of a fresh water spring and nearby medicinal hot springs.

In 1917, by Executive Order Number 2508 (January 3, 1917) (amended by Executive Order Number 2525 (February 6, 1917)), the Federal government established a reservation around the Native village of Elim in Norton Bay, about 110 miles southeast of Nome, Alaska. The Executive Order set aside the Reservation for the benefit and use of the United States Bureau of Education and of the natives of indigenous Alaskan race. At the time of its establishment, the Reservation was approximately 350,000 acres.

In 1919, Congress passed a law that prohibited the withdrawal of public lands for an Indian reservation except by Act of Congress. Eight years later, Congress mandated that, except for temporary withdrawals by the Secretary of the Interior, changes in the boundaries of reservations created by Executive Order, proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress.

Notwithstanding the 1919 and 1927 changes in law, the President issued Executive Order 5207 (October 12, 1929), revoking approximately 50,000 acres of the Norton Bay Reservation. This Executive Order first opened the lands to entry by ex-servicemen of World War I, as required by the Act of February 14, 1920 (41 Stat. 434, as amended, 42 Stat. 358, 1067). After a 91-day period, during which no serviceman sought entry, the lands were opened up to entry by the general public.

Until recently, the reason why the lands were deleted from the Norton Bay Reservation was not generally known. However, it appears now that there were multiple attempts by non-Natives to obtain modifications of the Executive Orders establishing the Norton Bay Reservation to open up all or part of the Reservation for commercial uses such as fur farming and mining by non-Natives. These attempts were successful in 1929 but not in 1934, when Secretary of the Interior Harold Ickes halted the additional attempts to open much of the Reservation to mining for the benefit of non-Natives.

There is little or no evidence that the Native people of Elim gave their informed consent to the 1929 revocation. There was lack of Native community experience and knowledge of the non-Native political and governmental process. The residents of Elim at that time had become American citizens only five years before in 1924. In addition, the oral history of the villagers indicates that they were not informed and did not give their consent to revocation.

The revocation became particularly significant in 1971, when Congress passed the Alaska Native Claims Settlement Act (ANCSA). Section 19(b) of ANCSA provided certain Native villages, that previously had been located on reservation land, the option of taking title to the reservation lands surrounding their villages as

of 1971 or a different settlement involving lands, money, and rights to revenue sharing. The village of Elim was offered and took title to the lands making up the Norton Bay Reservation. However, the 1929 deletion had effectively reduced Elim's entitlement by 50,000 acres. Although the people of Elim felt that the lands had been wrongly taken from them in 1929, they did not have the financial resources or documentation to prove it. It also appears that no one within government knew the facts surrounding this revocation since the facts were not made known to Elim during the establishment of their ANCSA section 19(b) Native corporation and the identification of their land base.

Some of the prime coastal lands revoked in 1929 have since been selected or conveyed to another Native village corporation under ANCSA. For that reason, it would not be prudent to make the lands available for selection by Elim. Instead, this bill makes other nearby Federal lands available for selection.

In light of the background and historical setting of the 1929 revocation, this particular case warrants remedial action by Congress. H.R. 3090 authorizes Elim, on behalf of its Native shareholders, to select and have conveyed to it 50,000 acres of lands north of and adjacent to the original Norton Bay Reservation, subject to certain covenants, reservations, terms and conditions.

The bill contains covenants, reservations, terms, and conditions that will be part of the conveyance to Elim. These provisions will help conserve fish and wildlife habitat on the lands conveyed, as well as hot and medicinal springs, and provide access to the public while providing Elim with the bulk of the rights of ownership so it can make beneficial and economic use of the lands. This was not circulated.

Considering the special and unique set of circumstances of the people of Elim, this legislation will help remedy in an appropriate way the inequity and help alleviate a source of great concern, frustration and feeling of loss by the people of Elim.

Section 2 of H.R. 3090 amends section 7 of ANCSA to allow an Alaskan Native to give settlement common stock to an Alaskan Native son or daughter, regardless of any type of termination of parental rights.

Section 7(h) of the Alaska Native Claims Settlement Act sets forth the general rules pertaining to the issuance and transfer of common stock in an Alaska Native Corporation, which stock is referred to as Settlement Common Stock. Generally, the holder of Settlement Common Stock is not permitted to sell, pledge or otherwise alienate this stock. However, section 7(h)(1)(C) of ANCSA provides certain exceptions to the general prohibition on the alienation of Settlement Common Stock. Under section 7(h)(1)(C)(iii), the holder of Settlement Common Stock may transfer some or all of the Settlement Common Stock to a close family member by inter vivos gift. Gifts of Settlement Common Stock are permitted to, among others, a child, grandchild or great-grandchild.

Alaska State law has been interpreted to sever, for all purposes, the relationship between a family and a child who has been adopted out, or for whom parental rights have been relinquished or terminated. Thus under existing law, a holder of Settlement Common Stock may not inter vivos gift transfer Settlement Common Stock

to a child who has been adopted by another family. The proposed amendment in section 2 will permit the biological family of an Alaska Native child to make an inter vivos gift to that child of Settlement Common Stock, regardless of the child's adoption into a non-Native family, or the relinquishment or termination of paternal rights. The enactment of the provisions of section 2 will resolve the problem currently faced by some Alaska Native children who are unable to receive shares in an Alaska Native Corporation because the relationship with their biological family has been legally severed under Alaska State law.

Section 3 of H.R. 3090 modifies the definition of settlement trust option in ANCSA to allow Alaska Native Corporation to establish trusts to hold assets for the benefit of Alaska Native Shareholders. As the law currently stands, these trusts may only benefit holders of Settlement Common Stock. The amendments contained in section 3 will permit Native Corporation shareholders, by the vote of majority of shares, to extend this benefit of ANCSA to all of the Native people in their community, including the children and grandchildren of the original stockholders, regardless of whether they yet own stock in the Native Corporation. This amendment redefines 'settlement trust' to permit Native Corporations to establish settlement trusts in which potential beneficiaries include shareholders, Natives and descendants of Natives. Because ANCSA was enacted to benefit all Natives, this amendment is in keeping with the original intent of that legislation. At the same time, the interests of Alaska Native Corporation shareholders are protected because this option is available only to those Corporations whose shareholders vote, by a majority of all outstanding voting shares, to benefit non-shareholders.

LEGISLATIVE HISTORY

H.R. 3090 was introduced by Representative Don Young on October 18, 1999. The bill was ordered reported on October 20, 1999. On November 5, the bill was amended and placed on the calendar. The bill passed the House on November 9, 1999. The bill was received in the Senate on November 10, 1999 and it was referred to the Committee on Energy and Natural Resources on November 19, 1999. A similar bill, S. 1702, was introduced by Senator Murkowski on October 6, 1999. The Committee held a hearing on S. 1702 on October 14, 1999. S. 1702 contains similar provisions to H.R. 3090, as well as additional provisions. At the business meeting on February 10, 2000, the Committee on Energy and Natural Resources ordered H.R. 3090 favorably reported.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on February 10, 2000 by a unanimous vote of a quorum present, recommends that the Senate pass H.R. 3090.

SECTION-BY-SECTION ANALYSIS

Section 1. Elim Native Corporation land restoration

Section 1 amends section 19 of the Alaska Native Claims Settlement Act by adding a new subsection (c) as follows.

Subsection (c)(1) sets out findings regarding the background and need for the legislation.

Subsection (c)(2) identifies the lands to be withdrawn ("Withdrawal Area") by reference to a map dated October 19, 1999, and withdraws the lands from all forms of appropriation or disposition under the public land laws for a two-year period.

Subsection (c)(3) authorizes Elim to select and ultimately receive title to 50,000 acres of lands from the lands inside the Withdrawal Area. The Secretary of the Interior is directed to convey to Elim the fee to the surface and subsurface estate in 50,000 acres of valid selections, subject to the covenants, reservations, terms and conditions in subsection (c).

Subsection (c)(3)(A) provides two years after the date of enactment for Elim to make its selections. To ensure that it receives the 50,000 acres, Elim may select up to 60,000 acres and must prioritize its selections at the time it makes the selections. Elim may not revoke or change its priorities. Elim must select a single tract of land adjacent to U.S. Survey No. 2548, Alaska, that is reasonably compact, contiguous, and in whole sections with two exceptions. The withdrawn lands remain withdrawn until the Secretary has conveyed all the lands that Elim Native Corporation is entitled to under this subsection.

Subsection (c)(3)(B) provides that, in addition to being subject to valid existing rights, Elim's selections may not supercede prior selections by the State of Alaska or other Native corporations, or valid entries by private individuals unless the State, Native Corporation, or individual relinquishes the selection entry prior to conveyance to Elim.

Subsection (c)(3)(C) provides that, on receipt of the Conveyance Lands, Elim will have all the legal rights and benefits as a landowner of land conveyed pursuant to the Alaska Native Claims Settlement Act ("ANCSA") subject to the covenants, reservations, terms and conditions in this subsection. All other provisions of ANCSA that were applicable to conveyances under section 19(b) of ANCSA are applicable to conveyances under this subsection.

Subsection (c)(3)(D) states that selection by and conveyance to Elim Native Corporation of these lands is in full satisfaction of any claim by Elim Native Corporation of entitlement to lands under section 19 of ANCSA.

Subsection (c)(4) provides that the covenants, terms and conditions under paragraphs (4), (5), and (6) will run with the land and be incorporated into any interim conveyance or patent conveying the lands to Elim.

Subsection (c)(4)(A) provides that Elim has all the rights of landowner to, and to utilize, the timber resources of the Conveyance Lands including construction of homes, cabins, for firewood and other domestic uses on any Elim lands, except for cutting and removing merchantable timber for sale and constructing roads and

related infrastructure for the support of such cutting and removing timber for sale.

Subsection (c)(4)(B) modifies Public Land Order 5563 to permit selection by Elim of lands encompassing prior withdrawals of hot or medicinal springs subject to the applicable covenants, reservations, terms and conditions in paragraphs (5) and (6).

Subsection (c)(4)(C) provides that if Elim receives lands encompassing the Tubutulik River or Clear Creek, or both, Elim will not allow activities in the bed or within 300 feet of these water courses which would cause or would likely cause erosion so as to significantly adversely impact water quality or fish habitat.

Subsection (c)(5)(A) sets forth the first of a series of rights to be retained by the United States in the conveyances. Subsection (a) states that the United States retains a right to enter the conveyance lands for purposes outlined after providing notice to Elim and an opportunity to have a representative present.

Subsection (c)(5)(B) provides for retaining rights and remedies against persons who cut or remove merchantable timber.

Subsection (c)(5)(C) provides for retaining of the right to reforest if merchantable timber is destroyed by fire, insects, disease or other man-made or natural occurrence, except for such occurrences that occur from Elim's exercise of its rights to use the conveyance lands as landowner.

Subsection (c)(5)(D) provides for retaining of the right of ingress and egress to the public under section 17(b) of ANCSA to allow the public to visit, for non-commercial purposes, the hot springs located on the conveyance lands and to use any part of the hot springs that is not commercially developed.

Subsection (c)(5)(E) provides for retaining the right to the United States to enter the conveyance lands containing hot springs in order to conduct scientific research. It also ensures that such research can be conducted and that the results of such research can be used without any compensation to Elim. Subparagraph (E) also provides an equal right to Elim to conduct such research on the hot springs and to use the results of the research without compensation to the United States.

Subsection (c)(5)(F) provides for retaining of a covenant that restricts commercial development of the hot springs by Elim to a maximum of 15% of the hot springs and 15% of the land within ¼ mile of the hot springs. This subparagraph also provides that any commercial development of those hot springs will not alter the natural hydrologic or thermal system associated with the hot springs. The provision makes clear that at least 85% of the lands within ¼ mile of the hot springs should be left in their natural state.

Subsection (c)(5)(G) provides that retaining the right to exercise prosecutorial discretion in the enforcement of any covenant, reservation, term or condition does not waive the right to enforce such covenant, reservation, term or condition.

Subsection (c)(6)(A) directs the Secretary and Elim to enter into a Memorandum of Understanding ("MOU") to implement this subsection. Subparagraph (A) requires that the MOU include reasonable measures to protect plants and animals in the hot springs and within ¼ mile of the hot springs. This subparagraph requires that the parties agree to meet periodically to review the MOU.

Subsection (c)(6)(B) requires Elim to incorporate the covenants, reservations, terms and conditions set forth in subsection (c) in any deed or other instrument by which Elim divests itself of any interest in all or portion of the Conveyance Lands.

Subsection (c)(6)(C) requires BLM, in consultation with Elim, to reserve easements under subsection 17(b) of ANCSA.

Subsection (c)(6)(D) provides: for the retention of other easements by the BLM, in consultation with Elim, including the right of the public to enter upon and travel along the Tubutulik River and Clear Creek within the Conveyance Lands; (2) that the easements shall include trails confined to foot travel along each bank of the Tubutulik River and Clear Creek; and (3) that trails be twenty-five feet wide and upland of the ordinary high water mark. It also provides for including one-acre sites along the two water course referenced, that the sites be selected in consultation with Elim, and that they be utilized for launching and taking out water craft as well as for short-term (twenty-four hours) camping, unless Elim consents to a longer period.

Subsection (c)(6)(E) provides that owners of inholdings within the boundaries of the Conveyance Lands have rights of ingress and egress. It provides also that such owners may not exercise these rights in a manner that might result in substantial damage to the surface of the lands and may not make any permanent improvement to the Conveyance Lands without the consent of Elim.

Subsection (c)(6)(F) provides that the Bureau of Land Management may reserve an easement for the Iditarod National Historic Trail in the land conveyance to Elim.

Subsection (c)(7) authorizes appropriations as may be necessary to implement subsection(c).

Section 2. Common stock to adopted-out descendants

Section 2 amends section 7 of ANCSA to allow an Alaskan Native to give settlement common stock to an Alaskan Native son or daughter, regardless of any type of termination of parental rights.

Section 3. Definition of settlement trust

This amendment redefines "settlement trust" to permit Native Corporation to establish settlement trusts in which potential beneficiaries include shareholders, Natives and descendants of Natives.

COST AND BUDGETARY CONSIDERATIONS

The following estimates of costs of this measure was provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 23, 2000.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3090, an act to amend the Alaska Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Megan Carroll (for federal costs), and Marjorie Miller (for the state, local, and tribal impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 3090—An act to amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes

CBO estimates that implementing H.R. 3090 would have no significant impact on the federal budget. Because H.R. 3090 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 3090 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. Enactment of this legislation would benefit the Elim Native Corporation.

H.R. 3090 would direct the Secretary of the Interior to convey 50,000 acres of public land administered by the Bureau of Land Management (BLM) in Alaska to the Elim Native Corporation. According to BLM, the area from which the corporation would make the selection currently generates no receipts, and the agency does not expect the land to generate any significant receipts over the next 10 years. Therefore, conveying this acreage to the corporation would not affect the federal budget over that period.

H.R. 3090 also would amend the Alaska Claims Settlement Act (ANCSA) to broaden the definition of a "settlement trust" in ANCSA. We estimate that the provision would have no impact on federal spending.

On November 3, 1999, CBO transmitted a cost estimate for H.R. 3090 as ordered reported by the House Resources Committee on October 20, 1999. The two versions of the legislation are substantively similar, and the cost estimates are the same.

The CBO staff contacts are Megan Carroll (for federal costs), and Marjorie Miller (for the state, local, and tribal impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 3090. The bill is not a regulatory measure in the sense of imposing Government-establishment standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 3090, as ordered reported.

EXECUTIVE COMMUNICATIONS

On February 15, 2000 the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on H.R. 3090. These reports had not been received at the time the report on H.R. 3090 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advise of the Senate. The administration's testimony before the Committee on a bill, S. 1702, containing similar provisions follows:

STATEMENT OF MARILYN HEIMAN, SECRETARY'S REPRESENTATIVE IN ALASKA, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Committee, I want to thank you for the opportunity to provide our comments on S. 1702, the Alaska Native Claims Technical Amendments Act of 1999. As you know, we have worked in the past with the Committee and the Congress, with Alaska Native groups, the State, and other stakeholders to achieve consensus on technical amendments to ANCSA. The most recent example is last year's passage of H.R. 2000 representing a significant achievement of a consensus bill after many months of effort, negotiation, and accommodation among the interested parties. We continue to believe that ANCSA and ANILCA taken together form a sound basis for land management in Alaska and are not in need of reform, and we have testified that most problems can be resolved administratively, but we wish to continue to work with you, with Alaska Native groups, and other parties to consider technical amendments where they may assist in implementation and management or solve a problem.

As you know we have already engaged in considerable discussion with representatives of Alaska Native groups and your staff on this bill. I want to thank you for including in the bill technical changes we discussed with your staff. While we are making some progress, several provisions still give us serious concern. We would like to continue to work with interested parties to see if some consensus bill is possible, however given the concerns we currently have, we think it is premature to take any formal action on the bill at this time. If the bill were passed in its current form, the Secretary would recommend that the President veto it.

I would like to discuss our recommendations on S. 1702 and our policy concerns.

SECTION 2

We feel this section will be beneficial of adopted native children who, through no fault of their own, were excluded by the legal process from enjoying the benefits under ANCSA. These changes will correct an inequity and missed opportunity for those descendants who have been excluded under current authorities. In addition this pro-

posal will reduce constraints that ANCSA corporations have had in recognition of their rightful membership.

SECTION 3

The Administration has serious concerns about this section and believes the exception is much more far reaching than is warranted. Section 3 amends the Civil Rights Act of 1964 (CRA) by expanding the Title VII exemption to include businesses which do $20,000 or more business a year with Native Corporations. It provides a complete exemption from the definition of "employer" in Title VII of the CRA.

While we support the concept of providing incentives for contracting with Native owned businesses, this change goes far beyond that goal. As a matter of Administration policy, we cannot support an expansion of the exemption in the Civil Rights Act of 1964 to include contractors of Native Corporations.

This amendment would not necessarily ensure that a contractor would in fact be a Native company, it would include any company that a Native Corporation contracts with for over $20,000 per year. The Administration strongly opposes section 3.

SECTION 4

We have no objection to Section 4. Its apparent intended effect would be to remove existing state corporate law barriers to a Native Corporation's voluntary expansion of the class of beneficiaries of its Settlement Trust to include individual Natives and descendants of Natives who have not yet become shareholders of the corporation. Since the existing provisions of 43 U.S.C. 1629e, and in particular 1629e(b)(3), at least impliedly limit the class of Settlement Trust beneficiaries to holders of Settlement Common Stock, this amendment of the definition would permit, but not require, a broader definition of the class of Settlement Trust beneficiaries.

SECTION 5

We recognize that Alaska Natives hold Native veterans in high regard. This section on Alaska Native veterans would greatly expand the eligibility for qualifying Alaska Native veterans of the Vietnam war to apply for allotments under the next section 41 of ANCSA, 43 U.S.C. 1629(g), established last year by section 432 of Public Law 105–276, entitled "Open Season for Certain Alaska Native Veterans for Allotments." Less than one year later, this provision reopens the compromise reached at the end of the 105th Congress after several years of negotiation and effort among the DOI agencies, the Congress and Alaska Natives.

Section 5 of the bill extends the eligibility period during which qualifying veterans must have served from the en-

acted period of 3 years, January 1969, to December 1971, to include the Vietnam war from August 1964, to May 1975.

This change completely undermines the philosophy and rationale for the amendment, and in so doing raises questions of fairness and equity. The 1998 Vietnam veterans provision as passed was intended to offer an opportunity to those Alaska Native Vietnam Veterans who, because of their military service, "missed the opportunity to apply for their Native allotments" during the period prior to the 1971 repeal of the 1906 Allotment Act. This rationale appears in House Report 104–73 and Senate Report 104–119 on H.R. 402, section 106, in the 104th Congress, which required the Interior Department report on Alaska Native veterans, since submitted to Congress, and which led to the 1998 amendment to ANCSA. The 3-year period represents the critical time when most Natives applied for an allotment because the anticipated repeal of the 1906 Allotment Act was widely advertised by the Department and several organizations across Alaska, and Alaska Natives were encouraged to apply.

Section 5 converts the program from an effort to correct an inequity of missed opportunity to, in effect, a special land bonus for Alaska Native Vietnam veterans. It cannot be reasonably argued that one who completed his service before the 1969 date missed his opportunity to apply by reason of service. Moreover, no one was eligible to apply for an allotment after the Act was repealed in December of 1971, so no one whose service began after that time missed an opportunity because of service. Yet S. 1702 extends the eligibility period to the entire Vietnam war including nearly 4 years past the repeal date of the 1906 Act.

As a bonus program, there is no more reason to provide this bonus for this class of Alaska Natives than any other Alaska Natives, or other Native Americans, nor is there any more reason to provide this bonus to Alaska Native veterans than to any other class of veterans whether they be from California, New York, Florida, or anywhere else.

Moreover the time frames for settlement of the allotments under this bill effectively jumps this class of allottees ahead of any other Alaska Native allottees who are still awaiting settlement of their allotments under the original 1906 Act, not to mention many hundreds more of those Alaska Natives still awaiting completion of their ANCSA settlements.

There was considerable concern in the Department to opening refuges and parks to new allotments. The Department originally wanted to limit new allotments to public domain lands outside of refuges and parks. This position was compromised in the negotiations for the 1998 Act. S. 1702 would significantly increase the number of eligible applicants to obtain allotments on refuge and park lands.

For the 1998 Act, there was considerable debate over providing the opportunity for heirs of deceased veterans to apply. Allowing heirs to apply raised a broad range of technical, legal, and management issues, as well as issues of precedent. No other Federal land grant program has allowed heirs to apply, including the 1906 Allotment Act. The compromise provision in the 1998 Act allowed an application by a personal representative of a deceased veteran who died for reasons directly related to the war. S. 1702 allows an application by the representative of any deceased Alaska Native veteran regardless of when or how he died, thus considerably increasing the class of heirs and the complexity of identifying eligible heirs and processing applications.

There are, in addition, a number of legal and drafting issues in section 5 which we have attempted to address in our review and discussions with interested parties. We strongly believe, however, that as to Alaska Native veterans of the Vietnam war we should continue to rely on last year's Congressionally developed and passed compromise amendment. Prior to the compromise, we had testified that we would recommend veto of legislation similar to section 5. The Administration maintains its strong opposition to the provisions of section 5.

There are one or two technical changes to last year's act which could be beneficial to clarify minor ambiguities or gaps in that act. We would be happy to identify these for inclusion in a consensus bill which hopefully can be achieved.

SECTION 6

In ANCSA, Congress provided for protection of fish and wildlife resources in authorizing the conveyance of the surface of lands in old refuges. Congress provided restrictive covenants in Section 22(g) of ANCSA to be included in title documents when refuge lands were conveyed to Native Corporations. These corporations took title to these lands subject to Section 22(g) of ANCSA. The first provisions of Section 22(g) provides for a right of first refusal for the United States if the Native Village Corporation sells the land. Once waived by an action of the United States the right of first refusal is extinguished. The bill does not change this provision.

S. 1702 would repeal the second restrictive covenant of Section 22(g). This second covenant says that such lands remain subject to the laws and regulations governing use and development of such Refuge. FWS has not been zealous in preventing use and development of Native Corporation lands within refuges; rather, corporation proposals have been evaluated on a case by case basis to determine whether or not the proposed use is compatible with the purposes for which the refuge was reserved.

Section 22(g) was a legislative compromise and should be retained to protect fish and wildlife resources in areas

withdrawn as units of the National Wildlife Refuge System prior to ANCSA. We are strongly opposed to section 6.

SECTION 7

This provision would provide for the selection of 50,000 acres of land by the Elim Native Corporation based on its claim that the United States wrongfully removed land which had been reserved as part of a larger tract for the benefit of the Eskimo Village of Elim in 1917. As you know, the Department has consistently disputed the claim of wrongful removal and has strongly opposed similar provisions in prior legislation in earlier Congresses, including H.R. 2505 in the 104th Congress and H.R. 2924 in the 105th Congress. In addition, the Department has previously announced that it would recommend veto of these bills, which contained such provisions among others. The Department's legal concerns with this provision continue.

Also, we note that the lands identified for selection on previous occasions by Elim have changed, and in at least one instance, lands identified by Elim for selection were also claimed by another Native group which claimed prior title. We understand that at present representatives for Elim are proposing yet another revision to the proposed land selection.

We remain open to discussion with Elim representatives of new possibilities for lands that might be selected with new equitable or legal bases for some selection, transfer, or exchange of lands.

SECTION 8

There is concern by the Administration regarding this section. This section would provide an exemption from the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, "and any other provision of law," for any person, acquiring land under ANCSA, for any liability as owner of that land by reason of contamination on that land at the time of acquisition, unless that person was "directly responsible for such contamination." This issue was addressed in the Report on Hazardous Substance Contamination of Alaska Native Claims Act Lands recently submitted by the Department to the Congress and this Committee pursuant to section 103 of Public Law 104–42. The question of a possible exemption of ANCSA landowners of transferred Federal lands was discussed among the interested Federal agencies, at the highest levels, and it was decided that no exemption would be recommended. The Administration remains strongly opposed to piecemeal exemptions from the Federal environmental laws. However, as we advised in that report, the EPA policy of June, 1997, "Policy Toward Landowners and Transferees of Federal Facilities," would be applicable to ANCSA landowners.

The policy addresses EPA's intent to exercise their enforcement discretion not to initiate enforcement actions

against landowners and transferees of federal lands for contamination existing as of the date of the conveyance of the property. EPA will not take enforcement action against a person or entity who did not cause or contribute to the condition. EPA is also aware that even preliminary assessment and evaluation can be burdensome and expensive to a landowner, and will not seek to impose these costs against ANCSA landowners relative to contamination or potential contamination that was on their property at the time of conveyance.

As you can see Mr. Chairman, we still have a lot of work to do before we have a bill we can support. However we are committed to continuing to work with you and other stakeholders to develop mutually acceptable provisions wherever possible. Again, thank you for the opportunity to testify.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill H.R. 3090, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 92–203—DEC. 18, 1971

AN ACT To provide for the settlement of certain land claims of Alaska Natives, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Alaska Native Claims Settlement Act".

* * * * * * *

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

* * * * * * *

(t) "Settlement Trust" means a trust—

(1) established and registered by a Native Corporation under the laws of the State of Alaska pursuant to a resolution of its shareholders, and

(2) operated for the **[**sole benefit of the holders of the corporation's Settlement Common Stock**]** *benefit of shareholders, Natives, and descendants of Natives,* in accordance with section 39 and the laws of the State of Alaska.

* * * * * * *

REGIONAL CORPORATIONS

SEC. 7. (a) For purposes of this Act, the State of Alaska shall be divided by the Secretary within one year after the date of enactment at this Act into twelve geographic regions, with each region

composed as far as practicable of Natives having a common heritage and sharing common interests.

* * * * * * *

(h)(1) RIGHTS AND RESTRICTIONS.—(A) Except as otherwise expressly provided in this Act, Settlement Common Stock of a Regional Corporation shall—

(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to shareholders;

(ii) permit the holder to receive dividends or other distributions from the corporation; and

(iii) vest in the holder all rights of a shareholder in a business corporation organized under the laws of the State.

(B) Except as otherwise provided in this subsection, Settlement Common Stock, inchoate rights thereto, and rights to dividends or distributions declared with respect thereto shall not be—

(i) sold;

(ii) pledged;

(iii) subjected to a lien or judgment execution;

(iv) assigned in present or future;

(v) treated as an asset under

(I) title 11 of the United States Code or any successor statute,

(II) any other insolvency or moratorium law, or

(III) other laws generally affecting creditors' rights; and or

(vi) otherwise alienated.

(C) Notwithstanding the restrictions set forth in subparagraph (B), Settlement Common Stock may be transferred to a Native or a descendent of a Native—

(i) pursuant to a court decree of separation, divorce, or child support;

(ii) by a holder who is a member of a professional organization, association, or board that limits his or her ability to practice his her profession because he or she holds Settlement Common Stock; or

(iii) as an inter vivos gift from a holder to his or her child, grandchild, great-grandchild, niece, or nephew, or (if the holder has reached the age of majority as defined by the laws of the State of Alaska) brother or sister*, notwithstanding an adoption, relinquishment, or termination of parental rights that may have altered or severed the legal relationship between the gift donor and recipient.*

* * * * * * *

REVOCATION OF RESERVATIONS

SEC. 19. (a) Notwithstanding any other provision of law, and except where inconsistent with the provisions of this Act, the various reserves set aside by legislation or by Executive or Secretarial Order for Native use or for administration of Native affairs, including those created under the Act of May 31, 1938 (52 Stat. 593), are hereby revoked subject to any valid existing rights of non-Natives. This section shall not apply to the Annette Island Reserve estab-

lished by the Act of March 3, 1891 (26 Stat. 1101) and no person enrolled in the Metlakatla Indian community of the Annette Island Reserve shall be eligible for benefits under this Act.

(b) Notwithstanding any other provision of law or of this Act, any Village Corporation or Corporations may elect within two years to acquire title to the surface and subsurface estates in any reserve set aside for the use or benefit of its stockholders or members prior to the date of enactment of this Act. If two or more villages are located on such reserve the election must be made by all of the members or stockholders of the Village Corporations concerned. In such event, the Secretary shall convey the land to the Village Corporation or Corporations, subject to valid existing rights as provided in subsection 14(g), and the Village Corporation shall not be eligible for any other land selections under this Act or to any distribution of Regional Corporation funds pursuant to section 7, and the enrolled residents of the Village Corporation shall not be eligible to receive Regional Corporation stock.

(c)(1) FINDINGS.—The Congress finds that—

(A) approximately 350,000 acres of land were withdrawn by Executive orders in 1917 for the use of the United States Bureau of Education and of the Natives of Indigenous Alaskan race;

(B) these lands comprised the Norton Bay Reservation (later referred to as Norton Bay Native Reserve) and were set aside for the benefit of the Native inhabitants of the Eskimo Village of Elim, Alaska;

(C) in 1929, 50,000 acres of land were deleted from the Norton Bay Reservation by Executive order.

(D) the lands were deleted from the Reservation for the benefit of others;

(E) the deleted lands were not available to the Native inhabitants of Elim under subsection (b) of this section at the time of passage of this Act;

(F) the deletion of these lands has been and continues to be a source of deep concern to the indigenous people of Elim; and

(G) until this matter is dealt with, it will continue to be a source of great frustration and sense of loss among the shareholders of the Elim Native Corporation and their descendants.

(2) WITHDRAWAL.—The lands depicted and designated "Withdrawal Area" on the map dated October 19, 1999, along with their legal descriptions, on file with the Bureau of Land Management, and entitled "Land Withdrawal Elim Native Corporation", are hereby withdrawn, subject to valid existing rights, from all forms of appropriation or disposition under the public land laws, including the mining and mineral leasing laws, for a period of 2 years from the date of the enactment of this subsection, for selection by the Elim Native Corporation (hereinafter referred to as "Elim").

(3) AUTHORITY TO SELECT AND CONVEY.—Elim is authorized to select in accordance with the rules set out in this paragraph, 50,000 acres of land (hereinafter referred to as "Conveyance Lands") within the boundary of the Withdrawal Area described in paragraph (2). The Secretary is authorized and directed to convey to Elim in fee the surface and subsurface estates to 50,000 acres of valid selections

in the Withdrawal Area, subject to the covenants, reservations, terms and conditions and other provisions of this subsection.

(A) Elim shall have 2 years from the date of the enactment of this subsection in which to file its selection of no more than 60,000 acres of land from the area described in paragraph (2). The selection application shall be filed with the Bureau of Land Management, Alaska State Office, shall describe a single tract adjacent to United States Survey No. 2548, Alaska, and shall be reasonably compact, contiguous, and in whole sections except when separated by unavailable land or when the remaining entitlement is less than a whole section. Elim shall prioritize its selections made pursuant to this subsection at the time such selections are filed, and such prioritization shall be irrevocable. Any lands selected shall remain withdrawn until conveyed or full entitlement has been achieved.

(B) The selection filed by Elim pursuant to this subsection shall be subject to valid existing rights and may not supercede prior selections of the State of Alaska, any Native corporation, or valid entries of any private individual unless such selection or entry is relinquished, rejected, and abandoned prior to conveyance to Elim.

(C) Upon receipt of the Conveyance lands, Elim shall have all legal rights and privileges as landowner, subject, only to the covenants, reservations, terms and conditions specified in this subsection.

(D) Selection by Elim of lands under this subsection and final conveyance of those lands to Elim shall constitute full satisfaction of any claim of entitlement of Elim with respect to its land entitlement.

(4) CONVENANTS, RESERVATIONS, TERMS, AND CONDITIONS.—The covenants, reservations, terms and conditions set forth in this paragraph and in paragraphs (5) and (6) with respect to the conveyance Lands shall run with the land and shall be incorporated into the interim conveyance, if any, and patent conveying the lands to Elim.

(A) Consistent with paragraph (3)(C) and subject to the applicable covenants, reservations, terms, and conditions contained in this paragraph and paragraphs (5) and (6), Elim shall have all rights to the timber resources of the conveyance lands for any use including, but not limited to, construction of homes, cabins, for firewood and other domestic uses on any Elim lands: Provided, That cutting and removal of merchantable Timber from the Conveyance lands for sale shall not be permitted: Provided further, That Elim shall not construct roads and related infrastructure for the support of such cutting and removal of timber for sale or permit other to do so. "Merchantable Timber" means timber that can be harvested and marketed by a prudent operator.

(B) Public Land Order 5563 of December 16, 1975, which made hot or medicinal springs available to other Native Corporations for selection and conveyance, is hereby modified to the extent necessary to permit the selection by Elim of the lands heretofore encompassed in any withdrawal of hot or medicinal springs and is withdrawn pursuant to this subsection. The Secretary is authorized and directed to convey such selections of

hot or medicinal springs (hereinafter referred to as "hot springs") subject to applicable covenants, reservations, terms and conditions contained in paragraphs (5) and (6).

(C) Should Elim select and have conveyed to it lands encompassing portions of the Tubutulik River or Clear Creek, or both, Elim shall not permit surface occupancy or knowingly permit any other activity on those portions of land lying within the bed of or within 300 feet of the ordinary high waterline of either or both of these water courses for purposes associated with mineral or other development or activity if they would cause or are likely to cause erosion or siltation of either water course to an extent that would significantly adversely impact water quality or fish habitat.

(5) RIGHTS RETAINED BY THE UNITED STATES.—With respect to conveyances authorized in paragraph (3), the following rights are retained by the United States:

(A) to enter upon the conveyance lands, after providing reasonable advance notice in writing Elim and after providing Elim with an opportunity to have a representative present upon such entry, in order to achieve the purpose and enforce the terms of this paragraph and paragraphs (4) and (6).

(B) To have, in addition to such rights held by Elim, all rights and remedies available against persons, jointly or severally, who cut or remove Merchantable Timber for sale.

(C) In cooperation with Elim, the right, but not the obligation, to reforest in the event previously existing merchantable Timber is destroyed by fire, wind, insects, disease, or other similar manmade or natural occurrence (excluding manmade occurrences resulting from the exercise by Elim of its lawful rights to use the Conveyance Lands).

(D) The right of ingress and egress over easements under section 17(b) for the public to visit, for noncommercial purposes, hot springs located on the Conveyance Lands and to use any part of the hot springs that is not commercially developed.

(E) The right to enter upon the lands containing hot springs for the purpose of conducting scientific research on such hot springs and to use the results of such research without compensation to Elim. Elim shall have an equal right to conduct research on the hot springs and to use the results of such research without compensation to the United States.

(F) A covenant that commercial development of the hot springs by Elim or its successors, assigns, or grantees shall include the right to develop only a maximum of 15 percent of the hot springs and any land within 1/4 mile of the hot springs. Such commercial development shall not alter the natural hydrologic or thermal system associated with the hot springs. Not less than 85 percent of the lands within 1/4 mile of the hot springs shall be left in their natural state.

(G) The right to exercise prosecutorial discretion in the enforcement of any covenant, reservation, term or condition shall not waive the right to enforce any covenant, reservation, term or condition.

(6) GENERAL.—

(A) MEMORANDUM OF UNDERSTANDING.—The Secretary and Elim shall, acting in good faith, enter into a Memorandum of Understanding (hereinafter referred to as the "MOU") to implement the provisions of this subsection. The MOU shall include among its provisions reasonable measures to protect plants and animals in the hot springs on the Conveyance Lands and on the land within 1/4 mile of the hot springs. The parties shall agree to meet periodically to review the matters contained in the MOU and to exercise their right to amend, replace, or extend the MOU. Such reviews shall include the authority to relocate any of the easements set forth in subparagraph (D) if the parties deem it advisable.

(B) INCORPORATION OF TERMS.—Elim shall incorporate the covenants, reservations, terms and conditions, in this subsection in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Conveyance Lands, including without limitation, a leasehold interest.

(C) SECTION 17(b) EASEMENTS.—The Bureau of Land Management, in consultation with Elim, shall reserve in the conveyance to Elim easements to the United States pursuant to subsection 17(b) that are not in conflict with other easements specified in this paragraph.

(D) OTHER EASEMENTS.—The Bureau of Land Management, in consultation with Elim, shall reserve easements which shall include the right of the public to enter upon and travel along the Tubutulik River and Clear Creek within the Conveyance Lands. Such easements shall also include easements for trails confined to foot travel along, and which may be established along each bank of, the Tubutulik River and Clear Creek. Such trails shall be 25 feet wide and upland of the ordinary high waterline of the water courses. The trails may deviate from the banks as necessary to go around man-made or natural obstructions or to portage around hazardous stretches of water. The easements shall also include one-acre sites along the water courses at reasonable intervals, selected in consultation with Elim, which may be used to launch or take out water craft from the water courses and to camp in non-permanent structures for a period not to exceed 24 hours without the consent of Elim.

(E) INHOLDERS.—The owners of lands held within the exterior boundaries of lands conveyed to Elim shall have all rights of ingress and egress to be vested in the inholder and the inholder's agents, employees, co-venturers, licensees, subsequent grantees, or invitees, and such easements shall be reserved in the conveyance to Elim. The inholder may not exercise the right of ingress and egress in a manner that may result in substantial damage to the surface of the lands or make any permanent improvements on Conveyance Lands without the prior consent of Elim.

(F) IDITAROD TRAIL.—The Bureau of Land Management may reserve an easement for the Iditarod National Historic Trail in the conveyance to Elim.

(7) IMPLEMENTATION.—There are authorized to be appropriated such sums as may be necessary to implement this subsection.

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